

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

Joint Application of :
 :
AMERICAN AIRLINES, INC. :
and : OST-2002-
SWISS INTERNATIONAL AIR LINES LTD. :
d/b/a SWISS :
 :
under 49 USC 41308 and 41309 for approval :
of and antitrust immunity for agreement :

JOINT MOTION OF AMERICAN AIRLINES, INC. AND
SWISS INTERNATIONAL AIR LINES LTD. d/b/a SWISS
FOR CONFIDENTIAL TREATMENT UNDER 14 CFR 302.12

Communications with respect to this document should be sent to:

For Swiss:

ERIN K. SWEENEY
Manager, Government & Legal
Affairs
Swiss International Air Lines
Ltd. d/b/a Swiss
41 Pinelawn Road
Melville, NY 11747
(631) 844-4504
(631) 844-4543 (fax)
esweeney@mail.swiss.com

THOMAS J. WHALEN
EVELYN D. SAHR
Condon & Forsyth LLP
1016 16th Street, N.W.
Suite 700
Washington, D.C. 20036
(202) 289-0500
(202) 289-4524 (fax)
esahr@condonlaw.com

For American Airlines:

HENRY C. JOYNER
Senior Vice President -
Planning
American Airlines, Inc.
P.O. Box 619616, MD 5628
DFW Airport, Texas 75261

C, DAVID CUSH
Vice President - Interna-
tional Planning and
Alliances
American Airlines, Inc.
P.O. Box 619616, MD 5639
DFW Airport, Texas 75261

WILLIAM K. RIS, JR.
Senior Vice President -
Government Affairs
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, D.C. 20036

J. OTTO GRUNOW
Managing Director - International Affairs
American Airlines, Inc.
P.O. Box 619616, MD 5639
DFW Airport, Texas 75261

GREG A. SIVINSKI
Senior Attorney
American Airlines, Inc.
P.O. Box 619616, MD 5675
DFW Airport, Texas 76261

CARL B. NELSON, JR.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 496-5647
(202) 857-4246 (fax)
carl.nelson@aa.com (email)

June 28, 2002

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FOR CONFIDENTIAL TREATMENT UNDER 14 CFR 302.12

American Airlines, Inc. and Swiss International Air Lines Ltd. d/b/a Swiss, under 14 CFR 302.12, hereby jointly move that the Department withhold certain proprietary and commercially sensitive confidential information from public disclosure.

American and Swiss are separately submitting confidential information in connection with their captioned joint application for approval of and antitrust immunity for an alliance agreement. The confidential documents are identified and described in the attached indexes. We request that access to these documents be limited to counsel and outside experts for interested parties.

In support of this motion, the joint applicants respectfully state as follows.

I. THE CONFIDENTIAL INFORMATION IS PROTECTED FROM PUBLIC DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT

The confidential information being submitted by American and Swiss is protected from public disclosure under various exemptions in the Freedom of Information Act, including 5 USC 552(b) (3) and 5 USC 552(b) (4).

Exemption (4) exempts from public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." This exemption has been construed to prevent public disclosure of information that is not the type usually released to the public, and that if released would cause substantial harm to the competitive position of the person from whom the information was obtained. See, e.g., Gulf & Western Industries, Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1980); American Airlines, Inc. v. NMB, 588 F.2d 863, 871 (2d Cir. 1978); National Parks & Conservation Ass'n v. Kleppe, 547 F.2d 673, 684 (D.C. Cir. 1976); Joint Application of Delta and Virgin Atlantic, Order 94-5-42, May 28, 1994; Joint Application of United and Lufthansa, Order 93-12-32, December 18, 1993; Joint Application of Northwest and KLM, Order 93-1-11, January 8, 1993, p. 19; Information Directives Concerning CRS, Order 88-5-46, May 22, 1988; Carrier-

Owned Computer Reservations Systems, ER-1385, Order 86-5-54, May 19, 1986; Information Directives Concerning CRS, Order 83-12-136, December 29, 1983. The purpose of these exemptions "is to protect the confidentiality of information which citizens provide to their government, but which would customarily not be released to the public, and to facilitate citizens' ability to confide in their government." Burke Energy Corp. v. DOE, 583 F.Supp. 507, 510 (D. Kansas 1984).

For information to qualify for exemption (4), the information must be (1) commercial or financial in nature, (2) obtained from a person, and (3) privileged or confidential. See Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290 (D.C. Cir. 1983). All of the confidential information being submitted by American and Swiss satisfies this three-part test.

First, the confidential information is commercial or financial in nature, in that it relates to commercially sensitive, proprietary, and privileged financial and corporate information. This type of confidential information is proprietary and commercially sensitive, and would not otherwise be made public. It is being submitted to the Department so that the Department can expeditiously evaluate the public interest benefits that will result from granting approval of and anti-trust immunity for the American/Swiss alliance.

Second, the information has been "obtained from a person" within the meaning of exemption (4).

Third, the information is "confidential." This confidential information is not available to the public, and its public disclosure is not required to further the public interest or to promote competition. In National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974), the Court held that information is "confidential" for purposes of exemption (4) if it would not customarily be released to the public by the person from whom it was obtained, and if disclosure is likely to have either of the following results: "(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained."

American and Swiss submit that public disclosure of the type of confidential information at issue here would cause substantial harm to their competitive position, and could impair the Government's ability to obtain similar information on a voluntary basis from individuals in the future.

II. ACCESS TO THESE HIGHLY SENSITIVE DOCUMENTS SHOULD BE LIMITED TO COUNSEL AND OUTSIDE EXPERTS

American and Swiss are submitting highly sensitive internal corporate documents, studies, surveys, analyses, reports, and data which should be accorded limited access.

Such access should be granted only to counsel and outside experts who file Rule 12 affidavits stating that the affiant will (1) use the information only for the purpose of participating in this proceeding, and (2) not disclose such information to anyone other than counsel or outside experts who have filed a valid affidavit.

The subject materials contain highly sensitive commercial information relating to the joint applicants' international planning and strategic decisionmaking. The information contained in these documents has not been publicly released. If released, competitors would gain valuable insights into the joint applicants' internal strategies and objectives with respect to the most competitively sensitive matters.

In order to minimize the risk of harmful disclosure of this competitively sensitive information, access should be strictly limited, as requested. American and Swiss are separately filing, concurrently with this motion, five copies of this information, in sealed cartons labeled "Confidential Treatment Requested Under 14 CFR 302.12; Access Is Limited To Counsel Or Outside Experts Who Have Filed Valid Affidavits."

The request to limit disclosure to counsel and outside experts is fully consistent with Department precedent and policy. Thus, in United/Lufthansa, Order 93-12-32, supra,

the Department granted the applicants' request to limit access to certain confidential information to counsel and outside experts who filed Rule 39 (now Rule 12) affidavits. In so limiting such access, the Department balanced the disclosure of the confidential information against the competitive harm to the applicants that would result if access were expanded, and concluded that "the undue competitive harm to the applicants outweighs the commenters' need for expanded access to the highly sensitive material in this case" (p. 5). The Department also noted that "interested parties to this proceeding can obtain adequate advice on the merits of the application through outside experts and persons authorized to review the materials" (*id.*). See also, e.g., Joint Application of American and Canadian International, Order 96-1-6, January 11, 1996, p. 3.

Access to the joint applicants' internal documents and data should be limited in a comparable manner, in light of the undue competitive harm that would result from a broader disclosure of such highly sensitive information.

CONCLUSION

The Department should grant this joint motion to withhold proprietary and commercial sensitive confidential information from public disclosure, as American and Swiss have requested herein.

Respectfully submitted,

Evelyn D. Sahr csn

THOMAS J. WHALEN
EVELYN D. SAHR

Attorneys for Swiss Inter-
national Air Lines Ltd.
d/b/a Swiss

Carl B. Nelson Jr

CARL B. NELSON, JR.
Associate General Counsel
American Airlines, Inc.

June 28, 2002

AMERICAN/SWISS IMMUNITY APPLICATION
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0027- 0035	2/18/02	Swiss & Zurich, prepared by International Planning
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0119- 0138	10/26/01	American Airlines, New York-Zurich Service, prepared by International Planning
0139- 0140	10/15/01	Swissair Widebody Aircraft Routings, prepared by Reid Appleby
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0148- 0149	10/10/01	Letter from C. David Cush to Arjen G. Pen, Crossair, re alliance relationship
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0161- 0175	9/6/01	Swissair/Sabena-American Relationship Value, prepared by International Planning
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0213- 0235	4/12/01	IATA Memorandum re Restriction on Use of Airspace in Southern Germany
0236- 0264	2/27/01	Swissair/Sabena-American, Background Briefing, prepared by International Planning
0265- 0268	2/6/01	Email from Tom Jiede to Robert Olson re Europe Traffic Data
0269- 0274	1/16/01	ORD-ZRH #2, prepared by Capacity Planning
0275- 0285	1/02/01	European Alliance Hub Performance, prepared by Capacity Planning
0286	11/8/00	Email from Joe Lepochat to Jim Watt re Swiss-German Accord

0287- 0288	11/3/00	Email from Bob Hill to John Boettcher re ZRH & BRU Feedback
0289- 0296	10/30/00	AA* & SR* Bookings Post Joint Selling, Focus on Switzerland, prepared by Regional Sales Europe
0297- 0311	10/16/00	Swissair/Sabena, USA - New Apex Fare Structure
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0330- 0334	9/28/00	Email from Bob Hill to Patrick von Dach, Swissair, re Forecast Information on ZRH- ORD and ZRH-DFW
0335- 0342	9/26/00	Pricing Code of Conduct, SN/SR/AA
0343- 0356	9/6/00	Email from Bob Hill to Walter Aue re ZRH BRU LHR LGW Hub Traffic Study
0357- 0359	9/8/00	Email from Bob Hill to Patrick von Dach, Swissair, re AA/SR/SN North Atlantic Program for Summer 2001
0360- 0363	9/1/00	Alliance Market Summary, prepared by Mark Haneke
0364- 0371	8/31/00	ZRH/BRU/LHR/LGW, Transatlantic Traffic Analysis
0372- 0385	8/28/00	Package re Codeshare Relationship with Swissair and Sabena, prepared by Damian Brooke
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018-023	1/14/02	Crossair Alliance Sales & Marketing - Business Profile & Alliance Opportunities (Basle)
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041-068	Undated	Crossair Presentation BP Phoenix

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by email on all persons named below.

bkeiner@crowell.com

robert.cohn@shawpittman.com

sascha.vanderbellen@shawpittman.com

megan.rosia@nwa.com

jmanley@wilmer.com

jfry@woa.com

nathaniel.breed@shawpittman.com

dvaughan@kelleydrye.com

jrichardson@crispinbrenner.com

lhalloway@crowell.com

rtaylor@steptoe.com

jamestello@earthlink.net

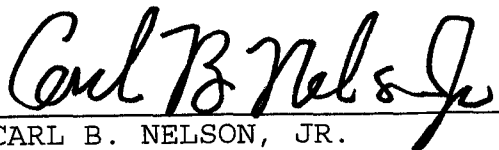
mroller@rollerbauer.com

msinick@ssd.com

roger.fones@doj.gov

tcbentdw@hq.transcom.mil

jim.ballough@faa.gov


CARL B. NELSON, JR.

June 28, 2002